

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DAVID EVERETT,

Plaintiff,

v.

CHRISTINE GREGOIRE, et al.,

Defendants.

Case No. C07-5027RJB

ORDER GRANTING
PLAINTIFF'S MOTION TO
DISMISS

This matter comes before the court on consideration of the Report and Recommendation of the Magistrate Judge (Dkt. 6) and on Plaintiff's Motion for Dismissal Before Resting (Dkt. 8). The court has considered the relevant documents and the file herein.

In this civil rights action, the Magistrate Judge issued a Report and Recommendation, recommending that the case be dismissed without prejudice under *Heck v. Humphrey*, 512 U.S. 477 (1994). Dkt. 6. On February 22, 2007, plaintiff filed a motion, requesting that the court dismiss this case without prejudice under Fed.R.Civ.P. 41(a)(1). Dkt. 8.

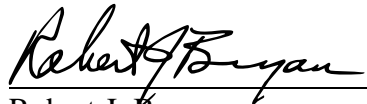
Fed.R.Civ.P. 41(a)(1) provides that a civil action may be voluntarily dismissed by the plaintiff before the adverse party has answered or filed a motion for summary judgment. Defendants have not yet been served in this matter. The court should therefore grant plaintiff's motion to dismiss. Because plaintiff has requested a voluntary dismissal of the case, the dismissal should not be considered a dismissal for purposes of 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(B).

Therefore, it is hereby

ORDERED that Plaintiff's Motion for Dismissal Before Resting (Dkt. 8) is **GRANTED**. The Report and Recommendation of the Magistrate Judge (Dkt. 6) is moot. This case is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed.R.Civ.P. 41(a).

1 The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of record
2 and to any part appearing *pro se* at said party's last known address.

3 Dated this 2nd day of March, 2007.

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5 Robert J. Bryan
6 United States District Judge
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